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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,981	10/15/2001	Raymond Anthony Joao	RJ220	4403

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EXAMINER

SHEIKH, ASFAND M

ART UNIT	PAPER NUMBER
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3627

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08/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/977,981	Applicant(s) JOAO, RAYMOND ANTHONY	
	Examiner ASFAND M. SHEIKH	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 41-51,53,54,57,60-62 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-50,53,61,62 and 64-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 51,54,57 and 60 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 41-50, 53, 61-62 and 64-66 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See *Benson*, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson*, the use of a specific machine or transformation of an article ***must impose meaningful limits on the claim's scope to impart patent-eligibility***. See *Benson*, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process ***must not merely be insignificant extra-solution activity***. See *Flook*, 437 U.S. at 590.

The examiner notes that receiving and/or storing information regarding a ticket request or a ticket option request, generating at least one of a ticket availability message and a ticket option availability message, transmitting the at least one of a ticket availability message and a ticket option availability message, and (etc) ***does not impose any meaningful limit on the scope of the claim*** and is merely ***insignificant extra-solution activity***.

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To qualify as a § 101 statutory process, Applicant should amend the claims such that the critical steps are carried out via a processor or computer (in the body of the claim and not in the preamble). Amending the preamble to read a computer-implemented method would not overcome this rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41-50, 53, 61-62 and 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donner (US 7,031,945 B1) in view of Gebb (US 6,067,532).

Claim 41, 44, and 65

Donner discloses storing information regarding a ticket request or a ticket option request for at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event (see at least, col. 11, lines 45-61: the examiner notes re-allocation of seats may occur after an event has begun and that "willing or interested" patrons who desire better seats

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(e.g. tickets see col. 12, lines 14-30) and col. 11, lines 62-col. 12, lines 15: the examiner notes a profile is associated with a patron that is "determined" to meet the needs of the patrons satisfaction for a seat (e.g. form of a request)), wherein the ticket for a portion of the event or the ticket option for a portion of the event is derived from a ticket for an entire event, wherein the event is at least one of a game, an athletic event, a competition, a performance, a concert, and a tournament, and further wherein the event is an event which takes place at or in at least one of a stadium, an arena, a theatre, a movie theatre, a concert hall, a museum, and a performance hall (see at least, col. 10, lines 63-col. 11, lines 2 and col. 12, lines 14-30: the examiner notes a new ticket corresponding to the portion of the event may be created), and further wherein the ticket for the entire event corresponds to a seat or seats at the at least one of a stadium, an arena, a theatre, a movie theatre, a concert hall, a museum, and a performance hall, for the event (see at least, col. 10, lines 63-col. 11, lines 2 and col. 11, lines 45-col. 12, lines 30), wherein the ticket for the entire event is purchased from a ticket issuer by a first individual having a ticket account (see at least, col. 11, lines 3-21), and further wherein the ticket for a portion of the event or the ticket option for a portion of the event is purchased by or used by a second individual during the event and before the completion or the conclusion of the event with a payment for a purchase or a use of the ticket for a portion of the event, or a payment for a purchase or a use of the ticket option for a portion of the event (see at least, col. 11, lines 45-col. 12, lines 15);

receiving and storing information regarding an available ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event either prior to a start or a completion or a conclusion of the event or when the first individual or a third individual is leaving a venue of the event or leaving the event during the event and prior to a completion or a conclusion of the event, wherein the information regarding an available ticket for a portion of an event is transmitted from a first communication device and is received by a receiver (see at least, coll. 6, lines 14-21 and col. 59-67, lines 56-FIG. 28-37: the examiner notes an “optional polling process” seats that may occur at any point in the process (e.g. after the event has begun))

processing the information regarding a ticket request or a ticket option request for at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event with a processing device, wherein the processing device processes the information regarding a ticket request or a ticket option request using the information regarding an available ticket (see at least, col. 11, lines 45-col. 12, lines 30: the examiner notes the “re-allocation process” is a processing information with respect to a ticket);

generating at least one of a ticket availability message and a ticket option availability message, wherein the at least one of a ticket availability message and a ticket option availability message contains information regarding at least one of a ticket for a portion of an event which remains after a start of the

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event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event, wherein the at least one of a ticket availability message and a ticket option availability message is generated before a completion or a conclusion of the event (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30); and

transmitting the at least one of a ticket availability message and a ticket option availability message to a second communication device associated with or used by the second individual or a fourth individual, wherein the at least one of a ticket availability message and a ticket option availability message is transmitted to the second communication device before a completion or a conclusion of the event (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30).

Donner fails to disclose payment for a purchase being made to the ticket account of the first individual and further [Claim 44] at least one of effectuating a payment to the ticket account and effectuating a withdrawal from an account associated with the second individual or the fourth individual.

However Gebb discloses payment for a purchase being made to the ticket account of the first individual (see at least, 2, lines 10-22) and further [Claim 44] at least one of effectuating a payment to the ticket account and effectuating a withdrawal from an account associated with the second individual or the fourth individual (see at least, 2, lines 10-22 and col. 2, lines 51-63: the examiner notes utilizing a credit card associated with the buyer is effecting a withdrawal from an account (e.g. charge against account)).

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The examiner takes the position that it would obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Donner's "re-allocation" of tickets to include payment for a purchase being made to the ticket account of the first individual as taught by Gebb. One of ordinary skill in the art would have been motivated to combine the teachings of Gebb to Donner for the purpose of selling tickets on a secondary market to people while maintaining confidence in the resale transaction and the availability and authenticity of a ticket (see at least, Gebb, col. 2, lines 3- 9).

Claim 42

Donner discloses receiving a response to the at least one of a ticket availability message and a ticket option availability message, wherein the response is transmitted from the second communication device (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30); and processing a transaction regarding a purchase of the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30).

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Claim 43

Donner discloses transmitting information regarding the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event to the second communication device (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30).; and at least one of printing via a printer the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and displaying via a display device information regarding the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event (see at least, col. 11, lines 14-col. 12, lines 43).

Claim 45

Donner discloses wherein the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event is a ticket (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30).

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Claim 46

Donner discloses the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event is a ticket option (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30: the examiner notes a re-allocation for a ticket is a "ticket option" for a different patron's chance at a new ticket).

Claim 47

Donner discloses wherein the at least one of a ticket availability message and a ticket option availability message is transmitted via, on, or over, at least one of the Internet and the World Wide Web (see at least, coll. 6, lines 14-21 and col. 8, lines 22-41 and col. 11, lines 45-col. 12, lines 30).

Claim 48, 49, and 50

Donner discloses wherein the first communication device or the second communication device is a wireless device or a wireless telephone or a personal digital assistant Web (see at least, coll. 6, lines 14-21 and col. 8, lines 22-41 and col. 11, lines 45-col. 12, lines 30) or a kiosk or an automated teller machine (see at least, col. 11, lines 3-21)

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Claim 53

Donner discloses wherein the second individual or the fourth individual is located at the event or at a venue of the event (see at least, col. 11, lines 45-col. 12, lines 30).

Claim 61

Donner discloses wherein the event is at least one of a game, an athletic event, a competition, and a tournament, and further wherein the event takes place at or in a stadium or an arena, and further wherein the ticket corresponds to a seat at or in the stadium or the arena (see at least, col. 10, lines 63-col. 11, lines 2 and col. 12, lines 14-30).

Claim 62

Donner discloses wherein the event is a performance or a concert, and further wherein the event takes place at or in at least one of a stadium, an arena, a theatre, a movie theatre, a concert hall, a museum, and a performance hall, and further wherein the ticket corresponds to a seat at the at least one of a stadium, an arena, a theatre, a movie theatre, a concert hall, a museum, and a performance hall (see at least, col. 10, lines 63-col. 11, lines 2 and col. 12, lines 14-30).

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Claim 66

Donner discloses receiving a response to the at least one of a ticket availability message and a ticket option availability message, wherein the response is transmitted from the second communication device(see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30); processing a transaction regarding a purchase of the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30); transmitting information regarding the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event to the second communication device (see at least, coll. 6, lines 14-21 and col. 11, lines 45-col. 12, lines 30), and at least one of printing via a printer the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and displaying via a display device information regarding the at least one of a ticket for a portion of an event which remains after a start of the event and before a completion or a conclusion of the event and a ticket option for a portion

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of an event which remains after a start of the event and before a completion or a conclusion of the event. (see at least, col. 11, lines 14-col. 12, lines 43).

Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Donner (US 7,031,945 B1) in view of Gebb (US 6,067,532) as applied to claim 41 above, and further in view of Sextro et al. (US 2002/0040482 A1).

Claim 64

Donner in view of Gebb disclose the elements of claimed invention as shown above, however fails to disclose wherein the first communication device or the second communication device is an interactive television.

However Sextro discloses the use of an interactive television used by an individual for the purchase a ticket (see at least, abstract and [0013] and FIG. 5).

The examiner takes the position that it would obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Donner in view of Gebb's "reallocation of tickets" and payment to individual account holders to include the use of an interactive television used by an individual for the purchase a ticket as taught by Sextro. One of ordinary skill in the art would have been motivated to combine the teachings of Sextro to Donner in view of Gebb for the purpose of fulfilling user desire of receiving video over cable while having the ability to overlay Internet content on the video (see at least, Sextro, [0004]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ASFAND M. SHEIKH whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand M. Sheikh/
Examiner, Art Unit 3627

8/3/2009